

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re: AUTOMOTIVE PARTS
ANTITRUST LITIGATION

Master File No. 12-md-02311
Honorable Marianne O. Battani

In Re: ALL AUTO PARTS CASES

2:12-md-02311-MOB-MKM

THIS RELATES TO:

All Dealership Actions

**DEFENDANTS' OPPOSITION TO AUTO DEALER PLAINTIFF
HOLZHAUER AUTO AND TRUCK SALES, INC.'S MOTION
TO STAY CONSIDERATION OF HOLZHAUER'S OBJECTION
TO MASTER ESSHAKI'S AUGUST 3, 2015 AMENDED RULING**

CONCISE STATEMENT OF THE ISSUES PRESENTED

1. Whether the Court should stay consideration of Auto Dealer Plaintiff Holzhauer Auto and Truck Sales, Inc.'s ("Holzhauer") Objection to, and Motion to Modify, Special Master Esshaki's August 3, 2015 Amended Ruling now that the Special Master has ruled on Holzhauer's Motion To Withdraw?

Answer: No.

STATEMENT OF CONTROLLING OR MOST APPROPRIATE AUTHORITIES

Rulings

Order Granting Automobile Dealer Plaintiff Holzhauer Auto and Truck Sales, Inc.'s Rule 21 Motion To Be Dropped as a Named Plaintiff and Proposed Class Representative (12-md-02311, ECF No. 1113) (September 29, 2015).

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ARGUMENT

Since last March, Plaintiff Holzhauer Auto and Truck Sales, Inc. (“Holzhauer”) has simply refused to comply with its discovery obligations, including by filing (in late August 2015) a motion seeking permission to withdraw from this litigation without meeting any of those obligations. The Special Master has now *twice* ordered Holzhauer to comply with its longstanding discovery obligations, regardless of whether it is permitted to withdraw, and yet Holzhauer still has not obeyed these orders. The first of these Orders was issued on August 3, the second on September 29. Holzhauer’s objection to the first of these Orders has been fully briefed and is ready for decision. Auto Dealers’ motion that the Court stay its disposition of that objection has been rendered moot by the Special Master’s September 29 Order and therefore should be denied.

In his August 3, 2015 Amended Ruling, the Special Master granted Defendant’s Motion to Compel, ruling that Holzhauer must comply with its long-standing discovery obligations under the Special Master’s Stipulated Orders of January 7, 2015 and May 12, 2015, even if Holzhauer were to move to withdraw as a class representative. On August 24, 2015, Holzhauer filed its objection to the Amended Ruling, arguing that the Special Master had abused his discretion in requiring Holzhauer to comply with its discovery obligations as a condition of withdrawal. The next day, Holzhauer filed a motion to withdraw under Fed. R. Civ. P. 21, arguing (directly contrary to the August 3 Amended Ruling) that doing so entitled Holzhauer to avoid its discovery obligations.

On September 21, 2015, Auto Dealers asked this Court to stay its ruling on Holzhauer’s objection to the Amended Ruling “until Special Master Esshaki rules on Holzhauer’s pending Rule 21 motion to withdraw.” (12-md-02311, ECF No. 1105 at 1.) On September 29, 2015, the Special Master ruled on Holzhauer’s Rule 21 Motion, specifically reaffirming his August 3 Order “requiring Holzhauer to comply with the January 7 and May 12, 2015 Stipulated Discovery Orders

prior to [its] withdrawal becoming effective.” Order Granting Automobile Dealer Plaintiff Holzhauer Auto and Truck Sales, Inc.’s Rule 21 Motion To Be Dropped as a Named Plaintiff and Proposed Class Representative (12-md-02311, ECF No. 1113).

There is therefore no reason to further delay a ruling on Holzhauer’s Objection to, and Motion to Modify, the Special Master’s August 3, 2015 Amended Ruling. The Special Master now has ruled *twice* that Holzhauer must comply with the Special Master’s prior orders of January 7 and May 12, 2015, *both* of which Holzhauer had *stipulated* to in order to avoid pending motions to compel. To finally put an end to Holzhauer’s protracted delay in meeting its basic discovery obligations, Defendants respectfully request that the Court both (1) deny Holzhauer’s Motion To Stay as moot, and (2) deny Holzhauer’s fully-briefed objection to the Special Master’s August 3, 2015 Amended Ruling.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2015, I caused the foregoing **DEFENDANTS' OPPOSITION TO AUTO DEALER PLAINTIFF HOLZHAUER AUTO AND TRUCK SALES, INC.'S MOTION TO STAY CONSIDERATION OF HOLZHAUER'S OBJECTION TO MASTER ESSHAKI'S AUGUST 3, 2015 AMENDED RULING** to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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